



**Montana Legislative Services Division**  
**Legal Services Office**

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May 26, 2011

John Masterson  
Montana Cannabis Industry Association  
P.O. Box 9085  
Missoula, MT 59807

Re: Proposed Referendum of Senate Bill 423

Dear Mr. Masterson:

On May 12, 2011, the Legislative Services Division received from the Montana Secretary of State notice of your submission of a proposed referendum to refer Senate Bill No. 423 to the Montana electorate. The text of the referendum petition has been reviewed pursuant to §13-27-202, MCA, for clarity, consistency, and other factors normally considered when drafting proposed legislation. Pursuant to §13-27-202(2), MCA, this letter constitutes the Legislative Services Division staff's recommendations related to your proposal.

Although you have provided a proposed title of the measure and the statements of implication ("FOR" or "AGAINST" language), these are written by the Montana Attorney General pursuant to §13-27-312, MCA. The form of the petition is approved by the Montana Secretary of State, and the Attorney General approves the form and reviews the petition for legal sufficiency pursuant to §13-27-202(4), MCA.

Section 13-27-201(2), MCA, requires the inclusion of the "complete text" of Senate Bill No. 423, either attached to or contained within each signature sheet circulated separately. You have not submitted a copy of the enrolled version of Senate Bill No. 423. I enclose herein a copy of the enrolled version for your review.

Article III, section 5, of the Montana Constitution, which allows for the qualified electors to approve or reject any act of the Legislature, provides:

(1) The people may approve or reject by referendum any act of the legislature except an appropriation of money. A referendum shall be held either upon order by the legislature or upon petition signed by at least five percent of the qualified electors in each of at least one-third of the legislative representative districts. The total number of signers must be at least five percent of the qualified electors of the state. A referendum petition shall be filed with the secretary of state no later than six months after adjournment of the legislature which passed the act.

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(2) An act referred to the people is in effect until suspended by petitions signed by at least 15 percent of the qualified electors in a majority of the legislative representative districts. If so suspended the act shall become operative only after it is approved at an election, the result of which has been determined and declared as provided by law.

I note that the text of your submission follows the form petition language provided in §13-27-205, MCA. However, I have suggested style changes to clarify the status of Senate Bill No. 423. Furthermore, I recommend language coordinating Article III, section 5(1) and Article III, section 5(2). Article III, section 5(2), is rarely used and the language in §13-27-205, MCA, does not include language for an act that is in effect until suspended by at least 15% of the qualified electors. Therefore, I suggest stylistic changes to clarify for the electorate the language of the petition.

### **Style Issues**

In the second sentence of the first paragraph, you have proposed: "If a majority of the voters vote for this measure at that election, it will become law." On May 13, 2011, Senate Bill No. 423 became law without the Governor's signature in accordance with §5-4-307(1), MCA. As such, your proposed statement is inaccurate. Therefore, I recommend that the language reflect the status of the bill as follows: "If a majority of voters approve Senate Bill 423 at that election it will remain law."

In the second sentence under "Statement of Purpose", the phrase "SB 423 repeals that voter initiative" is unrelated to "and creates a new program that requires doctors to pay the costs of being investigated for every recommendation made to more than 25 patients". I recommend making these two separate clauses. In addition, the use of "new" after "creates" is superfluous.

In several places in the petition, Senate Bill 423 is shortened to SB 423. Any reference to the bill should be "Senate Bill No."

As previously indicated, the statements of implication are written by the Attorney General. However, I caution you in advance that the language in the statements is troublesome. For example, in the statement "FOR Senate Bill 423, Which Repeals I-148, Becoming Law", it is difficult to discern what results from an affirmative vote.

### **Substantive Issues**

Under the heading of "Statement of Purpose", there are several clauses that may be misleading or confusing, for which I recommend changes.

First, you wrote "In 2004, 62% of Montana voters passed I-148 to create a medical marijuana program for certain patients." While this may be true, it may be immaterial what

percentage of voters approved of the initiative.

The second clause, as written, "SB 423 repeals that voter initiative", is accurate but may be misleading if written to convince voters that the Legislature is disregarding the people's right to initiative. According to §13-27-312(4), "The ballot statements must express the true and impartial explanation of the proposed ballot issue in plain, easily understood language and may not be arguments or written so as to create prejudice for or against the issue." *See also, Citizens Right to Recall v. State ex rel. McGrath*, 2006 MT 192, 333 Mont. 153, 142 P.3d 764. While I-148, as codified in §§50-46-101 through 103, 50-46-201, 202, 205, 206, 207, and 210, MCA, does repeal I-148, a review of the language in Senate Bill No. 423 reveals that the language in I-148 is used as the backbone for Senate Bill No. 423.

Initiative 148 reads:

This initiative would allow the production, possession, and use of marijuana by patients with debilitating medical conditions. Patients could use marijuana, under medical supervision, to alleviate the symptoms of conditions including cancer, glaucoma, and HIV/AIDS, or other conditions or treatments that produce wasting, severe or chronic pain, severe nausea, seizures, severe muscle spasms, or other conditions defined by the State. A patient or the patient's caregiver could register to grow and possess limited amounts of marijuana by submitting to the State written certification by a physician that the patient has a debilitating medical condition and would benefit from using marijuana.

First, Initiative 148 provides that: "This initiative would allow the production, possession, and use of marijuana by patients with debilitating medical conditions." This purpose is unchanged in Senate Bill No. 423.

Second, section 1 of Senate Bill No. 423 defines "debilitating medical condition" and includes not only those conditions listed in I-148 such as cancer, glaucoma, HIV/AIDS, treatments that produce wasting, severe or chronic pain, severe nausea, seizures, severe muscle spasms, or other conditions defined by the state, but also includes additional medical conditions. This can be viewed as a clarification and expansion of I-148.

Third, I-148 includes the statement: "A patient or the patient's caregiver could register to grow and possess limited amounts of marijuana by submitting to the State written certification by a physician that the patient has a debilitating medical condition and would benefit from using marijuana." This patient or caregiver right to register and grow a limited amount of marijuana still exists under Senate Bill 148, albeit in a more regulated fashion.

Legislative Services Division recommends that the clause be changed to accurately reflect the application of the I-148 language in Senate Bill No. 423.

The phrase "creates a new program that requires doctors to pay the costs of being investigated for every recommendation made to more than 25 patients" does not accurately paraphrase Senate Bill No. 423, section 3(10). Although the Department of Health and Human Services and the Board of Medical Examiners are given new responsibilities, no new program is created. Furthermore, the Board of Medical examiners does not investigate a physician for "every recommendation made to more than 25 patients". The Board reviews the medical practices of a physician who provides written certification to 25 or more patients in a 12-month period.

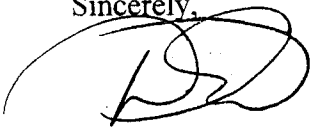
I suggest that the phrase "requires pain patients to see two doctors if they lack proof of their pain's etiology" is more correct if written to reflect that Senate Bill No. 423 requires a patient's severe chronic pain to be documented by the patient's treating physician, to have objective proof of the etiology of the pain, and to be confirmed by an independent second physician.

The Statement of Purpose indicates: "requires providers to produce marijuana free to patients regardless of cost". I find this requirement nowhere in Senate Bill No. 423, although there is clearly a statement that a provider may not accept remuneration for services or products provided to a registered cardholder.

Lastly, while the statement "provides no legal way to obtain cannabis seeds and plants" may be a correct reflection of what is not in Senate Bill No. 423, this statement is also true with respect to I-148. That initiative made no provision for obtaining cannabis seeds or plants. Therefore, this statement may be challenged on the grounds that it is misleading and meant to inappropriately influence electors. *Citizen's Right to Recall*, ¶20, citing *Fairness and Acct. in Ins. Reform v. Greene*, 180 Ariz. 582, 886 P.2d 1338 (1994).

Please note that pursuant to §13-27-202(1)(d), MCA, you are required to respond in writing accepting, rejecting, or modifying the Legislative Services Division's suggested changes.

Sincerely,



Daniel J. Whyte  
Legislative Attorney

c: Secretary of State Linda McCullough

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